

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION DIVISION 7. SECRETARY OF STATE CHAPTER 9. BUSINESS PROGRAMS

PROPOSAL TO AMEND 2 CALIFORNIA CODE OF REGULATIONS SECTIONS 21904 AND 21905 (PRECLEARANCE AND EXPEDITED FILING OF DOCUMENTS)

Notice is hereby given that the Secretary of State intends to amend the regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Secretary of State proposes the following regulatory action: Amend provisions of 2 California Code of Regulations (“CCR”) sections 21904 and 21905 to further implement, interpret or make specific provisions of Government Code section 12182.

AUTHORITY AND REFERENCE

Authority cited: Government Code section 12182.

Reference cited: Government Code section 12182.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Secretary of State proposes to expand the providing of preclearance and expedited filing of documents services to all documents subject to filing with the Secretary of State under the California Corporations Code, the California Financial Code, or the California Insurance Code. Currently, 2 CCR sections 21904 and 21905 authorize preclearance and expedited filing services only for specific corporate documents filed pursuant to a limited number of specified sections of the California Corporations Code. Under these existing regulations, entities such as limited liability companies, limited partnerships and numerous transactions involving business entities such as certain mergers and conversions are not included within the preclearance and expedited filing of documents services provisions. In addition, the proposed amendments provide for making technical corrections or clarifications to the existing provisions of the regulations, consistent with current law and the proposed amendments.

The purpose of the proposed amendments is to further implement the preclearance and expedited filing of documents services authorized by current Government Code section 12182. This section of the Government Code authorizes the Secretary of State to promulgate regulations establishing detailed procedures and fees for providing preclearance and expedited filing services. The Secretary of State, with the assistance of the Corporations Committee of the Business Law Section of the California State Bar, drafted the existing regulations. They became operative in 2000. Under the existing regulations, the preclearance service permits customers to submit a specified type of

document to the Secretary of State to ensure that such document conforms to the law and will be acceptable for filing. The expedited filing service guarantees that a specified type of document will be filed within a specific period of time if the document is found to conform to the law. The amount of the preclearance and expedited filing fees is based on the principle that the shorter the period for processing a document, the higher the fee. Whether to avail oneself of the preclearance or expedited filing of documents services is entirely at the option of the customer.

Specifically, the Secretary of State proposes to amend 2 CCR section 21904 (preclearance) in the following respects:

1. Change the definition of “eligible document” (2 CCR section 21904(a)(3)) to include any document submitted to the Secretary of State pursuant to the California Corporations Code, the California Financial Code, or the California Insurance Code and make conforming changes (2 CCR sections 21904(a)(5) and 21904(c)(2)). (Since the definitions applicable to 2 CCR section 21904 (preclearance) apply to 2 CCR section 21905 (expedited filing), the adoption of the proposed amendment to 2 CCR section 21904 (preclearance) will expand the availability of the expedited filing of document service, accordingly.);
2. Correct a typographical error in the existing regulation (2 CCR section 21904(a)(6));
3. Reduce the number of copies of eligible documents that need to be submitted for preclearance service from two to one (2 CCR section 21904(c)(1)(A));
4. Clarify that when a precleared document is subsequently submitted for filing, it must contain the required signatures (rather than original signatures), to implement the provisions of Chapter 273 of Statutes of 2003, permitting acceptance of facsimile signatures in some circumstances (2 CCR section 21904(d)(2)(A)).

The Secretary of State proposes to amend 2 CCR section 21905 (expedited filing) in the following respects:

1. Clarify that when a document is submitted for filing under the expedited filing provisions of the regulation, it must contain the required signatures (rather than original signatures), to implement the provisions of Chapter 273 of Statutes of 2003, permitting acceptance of facsimile signatures in some circumstances (2 CCR section 21905(c)(1)(A)).

Note: Under current regulations, the definition of “eligible documents” is the same for both “preclearance” and “expedited filing” purposes (2 CCR sections 21904 and 21905). This is not changed by the proposed amendments. Therefore, under the proposed amendments, the expedited filing of documents service will be available with respect to all documents filed pursuant to the California Corporations Code, the California Financial Code, or the California Insurance Code.

PUBLIC HEARING

The Secretary of State's Office has not scheduled a public hearing on this proposed rulemaking. However, the Secretary of State's Office will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State's Office. Written comments concerning the proposed rulemaking must be received by 5:00 p.m. on July 12, 2006. The Secretary of State's Office will consider only comments **received** by that time. Submit written comments to the contact indicated below.

AVAILABILITY OF THE TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person indicated below.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None beyond that budgeted or expected to be budgeted for the Secretary of State's Office. Pursuant to Government Code section 12182, the implementation of preclearance and expedited filing of document services is available only if it is supported by an appropriation in the Budget Act.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** None. The preclearance and expedited filing services are additional filing options for customers. The Secretary of State expects that only customers filing time-

sensitive entity documents will utilize these services. In these cases, the additional fee for preclearance or expedited filing service may be cost effective for the customer, particularly when the customer is completing or closing a complex business transaction.

8. Adoption of these amendments will not:

- (A) create or eliminate jobs within California;**
- (B) create new businesses or eliminate existing businesses within California; or**
- (C) affect the expansion of businesses currently doing business within California, although it may facilitate the conducting of business by allowing for the filing of additional documents earlier and with more certainty as to their acceptance by the Secretary of State.**

9. Significant effect on housing costs: None.

10. Effect on small business: None. The proposed amendments do not impose any mandatory fees on small businesses or require that any forms or reports be prepared or filed by any business. According to the proposed amendments, as with the existing regulations, the preclearance or expedited filing of documents is entirely optional. However, these amendments, if adopted, will afford the opportunity for additional small businesses and other businesses to file documents that are in conformance with the law sooner and by a desired date.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State's Office must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Secretary of State's Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the address indicated below. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the regulations as proposed to be amended, and the initial statement of reasons. The initial statement of reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's web site at <http://www.ss.ca.gov/business> and may also be obtained from the contact indicated below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State's Office may adopt the proposed amendments substantially as described in this notice. If the Secretary of State's Office makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State's Office adopts the amendments as revised. Please send requests for copies of any modified amendments to the attention of the Contact indicated below. The Secretary of State's Office will accept written comments on the modified amendments for 15 days after the date on which they are made available generally.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Secretary of State's web site at <http://www.ss.ca.gov/business>. A copy of the Final Statement of Reasons will be posted on the web site once the statement has been prepared.

CONTACT

The contact for this proposed rulemaking is:

Primary Contact:

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Backup Contact:

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All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to the contact listed above.